LEWIS JOHS Lewis Johs Avallone Aviles, LLP

Counsellors at Law

Via Fax: 914-390-4179

February 27, 2008

Hon. Stephen C. Robinson United States District Court Southern District of New York 300 Quarropas Street, Room 633 White Plains, New York 10601

Re: McCormick & Co., Inc. v.Kari-Out Club, LLC, t/a Kari-Out Co.;

Perk Up, Inc. S/h/a Kari Out Club, LLC t/a Kari-Out Co.

Case No.: 07-CV- 7244 LJAA File No.: 114-1076

Dear Judge Robinson:

This law firm represents the Defendant/Third-Party Plaintiff, Perk Up, Inc, in the above referenced matter.

We write to advise that the third-party action commenced by Perk Up, Inc. is being discontinued, with prejudice, and an Order of Dismissal is being prepared and will be submitted shortly by counsel for the third-party defendant.

Inasmuch as the third-party action is being discontinued, it is anticipated that the motion by the third-party defendant that is pending before the Court is being withdrawn.

Thank you for your attention to this matter.

Respectfully submitted,

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JTK/jc

cc:

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